

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA - BUTTE DIVISION

NATHANIEL KIBBY
3019567 (INMATE)
PETITIONER / PLAINTIFF

VS.

JIM SALMONSON
WARDEN - MSP - DEER LODGE
DEFENDANT

EMERGENCY PETITION
FOR A TEMPORARY RESTRAINING
ORDER ~ AND ~ ORDER TO
SHOW CAUSE FOR A PRELIMINARY
INJUNCTION

- I. THE PETITIONER (KIBBY) REQUESTS AN EMERGENCY ORDER GRANTING A TEMPORARY RESTRAINING ORDER AND FURTHER REQUESTS AN ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION AGAINST THE DEFENDANT(S) (SALMONSON), HIS SUCCESSOR IN OFFICE, AGENTS, EMPLOYEES, AND ALL OTHER PERSONS ACTING IN CONCERT AND PARTICIPATION WITH HIM; FROM DISCARDING, DESTROYING, OR DISPOSAL OF THE PETITIONER'S PERSONAL PROPERTY WHILE THE PETITIONER WORKS TO EXHAUST HIS ADMINISTRATIVE AND LEGAL REMEDIES. IN SUPPORT OF THESE REQUESTS THE PETITIONER ASSERTS THE FOLLOWING FACTS:
- 1) On 9/7/18, THE PETITIONER WAS AN INMATE AT THE MONTANA STATE PRISON WHEN HE WAS REMOVED FROM GENERAL POPULATION, AND PLACED IN PREHEARING CONFINEMENT WHEN HE RECEIVED A DISCIPLINARY WRITE UP, FOR THREATENING.
 - 2) On 9/12/18, THE PETITIONER WAS FOUND GUILTY OF THE DISCIPLINARY INFRACTION. HE APPEALED THE FINDINGS.
 - 3) On 9/13/18, THE PETITIONER WAS RECLASSIFIED TO A CLOSE CUSTODY GENERAL POPULATION HOUSING UNIT, UPON COMPLETION OF HIS DISCIPLINARY CONFINEMENT.
 - 4) On 10/2/18, THE PETITIONER COMPLETED HIS TIME IN DISCIPLINARY CONFINEMENT EXPECTING TO RETURN TO GENERAL POPULATION HOUSING AND RECEIVE ALL OF HIS

STORED PERSONAL PROPERTY BACK. INSTEAD HE WAS TAKEN TO MAX CUSTODY LOCKED HOUSING UNIT (ADMINISTRATIVE SEGREGATION) WITHOUT NOTICE OR DUE PROCESS.

- 5) On 10/7/18, THE PETITIONER RECEIVED LIMITED PERSONAL PROPERTY BACK, AS A RESULT OF HIS MAX CUSTODY HOUSING. HE WAS INFORMED THAT THE BALANCE OF HIS UNDELIVERED PROPERTY WOULD BE DISCARDED IF NOT MAILED OUT WITHIN 30 DAYS. THE PETITIONER IS INDIGENT AND HAS NO FUNDS TO MAIL OUT HIS PERSONAL PROPERTY, LEAVING FORCED DISPOSAL AS THE ONLY OPTION.
- 6) On 10/7/18, THE PETITIONER INITIATED THE PROCESS OF ADMINISTRATIVE REMEDIES, BY FILING SEVERAL GRIEVANCES CONCERNING: (A) DENIAL OF DUE PROCESS AT HIS DISCIPLINARY HEARING (5th and 14th AMENDMENTS) (B) DENIAL OF DUE PROCESS IN BEING HOUSED IN ADMINISTRATIVE SEGREGATION (5th AND 14th AMENDMENTS), (C) VIOLATION OF PROPERTY RIGHTS THROUGH IMPENDING FORCED DISPOSAL OF OTHERWISE AUTHORIZED PERSONAL PROPERTY (5th Amendment and 14th AMENDMENT), (D) IMPROPER CENSORSHIP OF BOOKS AND PUBLICATIONS WHEN STAFF CHOSE WHICH BOOKS TO THE PETITIONER, AND WHICH TO WITHHOLD, WITHOUT HIS INPUT (1st AMENDMENT, 5th AND 14th ALSO), (E) VIOLATION OF RELIGIOUS FREEDOM BY WITHHOLDING STUDY BIBLES, AND OTHER ESSENTIAL RELIGIOUS PUBLICATIONS (RLUIPA, 1st, 5th, 14th Amendments), (F) Together OR SEPERATELY THESE LEGAL AND OR CONSTITUTIONAL VIOLATIONS RAISE CRUEL AND UNUSUAL PUNISHMENT VIOLATIONS (8th AMENDMENT). (SEE GRIEVANCE EXHIBITS: A-6 FOR MORE DETAILS, INCLUDED)
- 7) THE PRISON GRIEVANCE PROCESS HAS ⁴~~5~~ LEVELS (INFORMAL, FORMAL, WARDEN APPEAL, DOC DIRECTOR APPEAL), AND CAN TAKE UP TO 6 MONTHS TO COMPLETE. THE PETITIONER MUST COMPLETE THE ADMINISTRATIVE REMEDIES PROCESS 1ST, BEFORE FILING A CIVIL RIGHTS CLAIM IN COURT.
- 8) THE PETITIONERS PROPERTY WILL BE FOREVER DISCARDED BY PRISON STAFF LONG BEFORE EXHAUSTION OF THE GRIEVANCE PROCESS, OR THE INITIATION OF LEGAL PROCEEDINGS FOR CIVIL RIGHTS VIOLATIONS IN FEDERAL OR STATE COURTS.

- 9) THE PROBABILITY THAT THE PETITIONERS CLAIM FOR ACTUAL DAMAGES (CAUSED FROM CONSTITUTIONAL, AND/OR LEGAL STATUTES VIOLATED OF HIS PROPERTY RIGHTS BY THE PRISON STAFF DISCARDING PROPERTY, DENIAL OF DUE PROCESS, CENSORSHIP, VIOLATING RELIGIOUS EXPRESSION, ETC) WILL BE PREVENTED BY THE DEFENDANT(S) QUALIFIED IMMUNITY FROM DAMAGES RELATING TOO, IS NEARLY 100% CERTAIN; AS THEY WILL ASSURABLY CLAIM THEIR ACTIONS - EVEN IF UNCONSTITUTIONAL, OR ILLEGAL BY LAW - WERE IN GOOD FAITH AND THE LAW WAS UNCLEAR TO THEM.
- 10) WITHOUT AN EMERGENCY TEMPORARY RESTRAINING ORDER, AND A PRELIMINARY INJUNCTION - INSTRUCTING THE PRISON TO REFRAIN FROM DISCARDING THE PETITIONERS PERSONAL PROPERTY (CURRENTLY IN STORAGE) - THE PETITIONER WILL SUFFER IMMEDIATE AND IRREPARABLE INJURY, LOSS, OR DAMAGE AS A RESULT. PROPERTY THAT IS UNIQUE RELIGIOUS PUBLICATIONS - PETITIONER IS INDIGENT AND CANNOT REPLACE. THIS IS ANTICIPATED TO OCCUR ON OR AROUND 11/7/18.
- 11) ALSO, THE PETITIONER ADVISES THE COURT THAT HE HAS NO ACCESS TO A TYPEWRITER, OR ACCESS TO LEGAL RESEARCH MATERIALS, AT THE TIME THIS PETITION WAS DRAFTED, RETARDING HIS ABILITY TO BETTER PREPARE OR SUPPLEMENT THIS PETITION WITH LEGAL CITATIONS AND CASELAW. INSTEAD FILING THIS PETITION IN SHORT TIME, WITH LIMETED RESOURCES, TO THE BEST OF HIS ABILITY.
- 12) THE STORAGE OF ALL WITHHELD PERSONAL PROPERTY - FOR A PERIOD OF TIME TO COMPLETE THE GRIEVANCE PROCESS (6 MONTHS), AND SEEK, OR INITIATE A JUDICIAL REMEDY (LESS THAN 1 YEAR) - BY THE PRISON PROPERTY OFFICE IS AN INSIGNIFICANT BURDEN. THE PROPERTY IN QUESTION IS LESS THAN 4 CUBIC FEET BY POLICY, ALREADY SEARCHED, INVENTORIED, AND STORED. LEAVING THE PRISON TO SUFFER NO INCONVENIENCE BEYOND IGNORING IT.
- 13) IT IS IN THE PUBLIC INTREST FOR PRISON STAFF TO OBEY THE CONSTITUTION AND OTHER LAWS.

II. NOW COMES THE PETITIONER WHO DECLARES UPON OATH AND AFFIRMATION THAT EVERYTHING STATED IN THIS PETITION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. SUBMITTED IN THE INTERESTS OF JUSTICE.

III. NOW COMES THE PETITIONER WHO HUMBLY REQUESTS :

- 1) THAT THE PETITIONERS REQUEST FOR AN EMERGENCY TEMPORARY RESTRAINING ORDER (AS OUTLINED IN PARAGRAPH I.) BE GRANTED. AND ...
- 2) THAT THE PETITIONERS REQUEST FOR AN ORDER TO SHOW CAUSE FOR A PRELIMINARY INJUNCTION BE GRANTED. AND
- 3) THAT THE COURT ADDRESS THE PETITIONERS T.R.O REQUEST IMMEDIATELY, AS THE ANTICIPATED DEADLINE TO DISCARD HIS PERSONAL PROPERTY IS ON 11/7/18 (OR THEREABOUTS). CONSTITUTING THE EMERGENCY NATURE OF THIS PETITION.
- 4) WHATEVER OTHER JUST RELIEF THIS HONORABLE COURT MAY PROVIDE.

SUBMITTED RESPECTFULLY,

Nathaniel B. Kirby

11-1-2018

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